

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 150
Title 14, California Code of Regulations
Re: Use of Dip Nets in the Commercial Nearshore Fishery

- I. Date of Initial Statement of Reasons: September 3, 2004
- II. Date of Pre-adoption Statement of Reasons: October 25, 2004
- III. Date of Final Statement of Reasons: December 10, 2004
- IV. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: August 27, 2004
Location: Morro Bay, CA
- (b) Adoption Hearing: Date: December 3, 2004
Location: Monterey, CA

- V. Update:

No changes have been made to the originally proposed regulatory language.

The Commission adopted the proposed regulations at its December 3, 2004 meeting.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Responses to public comments were included in the Pre-adoption Statement of Reasons (see attached). No other public comments, written or oral, were received during the public comment period.

- ## VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Establishing a gear endorsement program for dip nets was considered. This option was rejected as being too complex, too expensive and unnecessary. The number of nearshore fishery permittees involved in the dive fishery is very limited (at most 35).

(b) No Change Alternative:

Not adopting changes would prevent fishermen from using dip nets in the nearshore fishery.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action will allow current Nearshore Fishery Permit holders to use gear that historically has been used in the nearshore fishery but is not authorized under current regulations. The proposed action will not

allow new permittees into the fishery and will not remove any current permittees from the fishery.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

The Fish and Game Code, under general license provisions, authorizes the Department to prepare and issue licenses and permits and authorizes the Commission to determine the terms and conditions of permits. In 1998, the Legislature adopted the Nearshore Fisheries Management Act which provides authority to the Commission for the nearshore fishery. Included in this legislation is the authority to adopt a fishery management plan for nearshore fish stocks and regulations as determined necessary to regulate nearshore fish stocks and fisheries. The regulatory authority includes, but is not limited to, the establishment of limitations on the fishery based on type of gear and further specifies that any regulation adopted pursuant to this section shall be adopted following consultation with fishery participants.

The Commission adopted a Nearshore Fishery Management Plan in 2002 and established limitations on gear use in the nearshore fishery. The Commission also adopted a restricted access program that specifies the gears that can be used in the nearshore fishery. Hook-and-line gear or other gears authorized under a Nearshore Fishery Permit gear endorsement are allowed to be used. Currently, trap gear is the only gear endorsement.

A fishery participant requested that the Commission provide for the use of dip nets in the nearshore fishery. The proposed regulation would establish dip net as an authorized gear for all Nearshore Fishery Permit holders. The proposed regulations would not change the current authorization to use hook-and-line gear nor would it change the trap gear endorsement program.

The Commission adopted the proposed regulations at its December 3, 2004 meeting.

REGULATORY LANGUAGE

Subsection (l) of Section 150, Title 14, CCR, is amended to read:

150. Nearshore Fishery Restricted Access Program.

(l) Gear Authorized for Use. Only dip nets (as defined in Section 1.42, Title 14, CCR), hook-and-line gear consistent with restrictions of Section 150.17, Title 14, CCR, and gear authorized for use under a gear endorsement issued pursuant to Section 150.03, Title 14, CCR, shall be used to take, possess aboard a vessel, or land nearshore fish stocks as described in Section 150.01, Title 14, CCR.

NOTE:

Authority cited: Sections 1050 and 8587.1, Fish and Game Code. Reference: Sections 1050, 7850, 8043, 8046, 8102, 8587, 8587.1, 8588, 8589.5 and 8589.7, Fish and Game Code.